

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Benjamin Wilbur	Team: Team # 3	CCRB Case #: 200801087	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 07/22/2007 10:30 PM, Tuesday, 07/24/2007 , Monday, 01/14/2008	Location of Incident: West 155th Street and 8th Avenue	Precinct: 32	18 Mo. SOL 1/22/2009	EO SOL 1/22/2009	
Date/Time CV Reported Wed, 01/16/2008 9:43 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 01/22/2008 3:50 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Heriberto Vasquez	29410	937678	PSA 6
2. SGT William Gallagher	01160	925327	PSA 6
3. POM William Melrose	10181	933015	PSA 6
4. Officers			
5. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Federico Vazquez	03139	937679	PSA 6
2. POF Susan Sanchez	25950	914627	PSA 6
3. POF Lucy Kutarnia	01508	932868	PSA 6

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Force: On July 22, 2007, officers used physical force against § 87(2)(b)	
B. Officers	Force: On an unknown date in August 2007, officers used physical force against § 87(2)(b)	
C. An officer	Abuse: On an unknown date in August 2007, an officer threatened § 87(2)(b) with the use of mace.	
D. An officer	Abuse: On an unknown date in August 2007, an officer threatened § 87(2)(b) with a taser.	
E. POM Heriberto Vasquez	Discourtesy: On January 14, 2008, PO Heriberto Vasquez spoke obscenely to § 87(2)(b)	
F. Officers	Force: On January 14, 2008, officers used physical force against § 87(2)(b)	
G. POM William Melrose	Off. Language: On January 14, 2008, PO William Melrose made remarks to § 87(2)(b) based upon race.	
H. SGT William Gallagher	Discourtesy: On January 16, 2008, Sgt. William Gallagher spoke obscenely to § 87(2)(b)	

Synopsis

§ 87(2)(b) filed this complaint via telephone with the Internal Affairs Bureau on January 16, 2008. This case was later referred to the CCRB on January 22, 2008, under log number 08-02096. § 87(2)(b) complained about four separate incidents during his interview and as such they will be recounted chronologically. On July 22, 2007, between 9:00 PM and 10:00 PM, § 87(2)(b) entered his apartment building located at 2971 8th Avenue in Manhattan. § 87(2)(b) observed two female officers, identified via investigation as PO Lucy Kutarni and PO Susan Sanchez, speaking to an unknown male in the lobby of the building, and § 87(2)(b) went to ask the officers what they were doing. The officers asked § 87(2)(b) for identification which he refused to provide. § 87(2)(b) was also asked by one of the officers to stand against the wall which he refused to do. PO Sanchez called for backup and at least five unidentified officers arrived on the scene. The officers attempted to place § 87(2)(b) against a wall, which he refused to do. The officers allegedly slammed § 87(2)(b)'s face against a wall and punched § 87(2)(b) (Allegation A). § 87(2)(b) was then taken to § 87(2)(b) Hospital, where he was not treated, and released with a summons for disorderly conduct.

Approximately two weeks later on an unknown date in August 2007, at approximately 11:00 PM, § 87(2)(b) was walking in the parking lot outside of his building located at § 87(2)(b) in Manhattan. § 87(2)(b) observed at least seven unidentified uniformed officers speaking to some friends of his, although § 87(2)(b) could not identify any of these friends. One specific officer, PO1, told § 87(2)(b) to keep moving. § 87(2)(b) responded that he could do whatever he wanted. PO1 asked § 87(2)(b) for his identification which he refused to provide. PO1 asked § 87(2)(b) to place his hands against a police vehicle, which § 87(2)(b) also refused to do. Two additional unidentified Asian officers arrived, PO2 and PO3. PO2 and PO3 allegedly flipped § 87(2)(b) in the air and placed § 87(2)(b) on the ground (Allegation B). While on the ground PO1 allegedly placed a knee on § 87(2)(b)'s back to keep him from moving (Within Allegation B). § 87(2)(b) was placed inside of an unknown police vehicle. The windows of this vehicle were closed so § 87(2)(b) began to kick the windows in an attempt to break them. An unidentified officer then allegedly threatened to mace § 87(2)(b) (Allegation C) and taser him (Allegation D). § 87(2)(b) was eventually taken to an unidentified hospital and released without a summons or arrest. § 87(2)(b) stated that he waited so long to file these complaints since he did not know about the Civilian Complaint Review Board.

On January 14, 2008, at 12:40 PM, § 87(2)(b) went with his friends § 87(2)(b) and § 87(2)(b) to a restaurant and bodega located at 2923 8th Avenue in Manhattan. As § 87(2)(b) exited the restaurant he observed a dark van in the street and there were two officers inside, identified via investigation as PO William Melrose and PO Heriberto Vasquez. § 87(2)(b) walked over to the van and showed his identification to PO Vasquez. PO Vasquez allegedly told § 87(2)(b) to “get the fuck away from the van” (Allegation E). § 87(2)(b) backed up and the two officers exited the van. PO Vasquez attempted to handcuff § 87(2)(b) but he resisted which led to the officers physically attempting to handcuff § 87(2)(b) although § 87(2)(b) could not recall any specifics merely that the officers “roughed him up.” Once the officers got § 87(2)(b) on the ground, one of the officers allegedly hit § 87(2)(b) in the chest (Allegation F) and PO Melrose had his knee against § 87(2)(b)'s back. While § 87(2)(b) was on the ground PO Melrose allegedly called § 87(2)(b) a “black motherfucker” (Allegation G). § 87(2)(b) then allegedly felt blows to his body but did not know who did this as he was facedown on the ground (Within Allegation F). § 87(2)(b) was eventually handcuffed and brought to a police vehicle. § 87(2)(b) was taken to § 87(2)(b) Hospital and was arrested for disorderly conduct, resisting arrest and obstructing governmental administration.

On January 16, 2008, at approximately 9:00 AM, § 87(2)(b) went to the PSA 6 stationhouse in order to retrieve his cell phone which was taken away during the incident on July 14, 2008. § 87(2)(b) spoke with the desk sergeant, identified via investigation as Sgt. William Gallagher. Sgt. Gallagher stated that § 87(2)(b) could not retrieve his phone without a voucher which § 87(2)(b) did not have. § 87(2)(b) became agitated and demanded his phone. Sgt. Gallagher allegedly told § 87(2)(b) to “get the fuck out of the precinct” (Allegation H).

§ 87(2)(b) alleged that he was slammed against a wall and punched during the incident on July 22, 2007.

§ 87(2)(b), § 87(2)(g)

Summary of Complaint

§ 87(2)(b)

§ 87(2)(b) is a § 87(2)(b) black male who is 5'9", 175 pounds with black hair and § 87(2)(b) eyes. § 87(2)(b) provided a brief statement to the Internal Affairs Bureau when he filed this complaint on January 16, 2008 (Encl 3-3d). § 87(2)(b) was interviewed at the CCRB on February 14, 2008, in regards to all four incidents (Encl 5-5i). § 87(2)(b) had difficulty recalling the specifics of the incidents that he complained about, and as such the interview summaries below were noted with as much detail as initially provided. The statements were generally consistent, however, any inconsistencies were noted below.

On July 22, 2007, at some point between 9:00 PM and 10:00 PM, § 87(2)(b) walked into the lobby of his residence located at 2971 8th Avenue in Manhattan. § 87(2)(b) observed two officers inside of the lobby. PO1 is described as a white female with blond hair, 5'10" and a slim build. PO2 is a Hispanic female, 5'7" with a stocky build. Both officers were in uniform. PO1 was identified via investigation as PO Lucy Kutarnia and PO2 as Susan Sanchez. The officers were speaking with an unknown male in the lobby and § 87(2)(b) walked over to the officers and asked what they were doing. PO Sanchez asked § 87(2)(b) who he was, and he responded that he lived in the building. PO Sanchez asked § 87(2)(b) for his name, and he responded that he did not have to provide his name to the officers. PO Sanchez then asked § 87(2)(b) for his identification and he responded that he did not have any. PO Sanchez told § 87(2)(b) to get against the wall and he refused to do so. PO Sanchez then put a call for assistance over the radio and within ten seconds, five to six more officers arrived. § 87(2)(b) could only describe these officers as male; one may have been black and one may have been Native American. These officers remain unidentified. The officers attempted to place § 87(2)(b) against the wall and handcuff him, but § 87(2)(b) physically resisted. § 87(2)(b) stated that an unknown amount of officers slammed his face against the wall and put his arms behind his back. § 87(2)(b) believed that he was punched based on the feel of the blows, but never observed this. § 87(2)(b) could not recall where these blows were felt.

§ 87(2)(b) was placed in handcuffs, and requested medical attention since his asthma was acting up. § 87(2)(b) stated in his initial complaint that he was taken by PO Kutarnia and PO Sanchez to § 87(2)(b) Hospital but during his statement he could not recall which hospital he was taken to. § 87(2)(b) was at the hospital for two to three hours. PO Kutarnia and PO Sanchez stayed with § 87(2)(b) at the hospital and after he was treated the officers drove § 87(2)(b) home. Based on the officers' statements as well as hospital documentation, § 87(2)(b) was never treated at the hospital and was only present for under an hour. As § 87(2)(b) exited the police vehicle, he received a summons from one of the officers for disorderly conduct. The date of the summons is not legible, although it is written by PO Sanchez. § 87(2)(b)

§ 87(2)(b) could not recall when this incident occurred nor did he have any further information regarding his summons. § 87(2)(b) provided a summons during his interview, but could not recall if it was issued to him on the date of this incident.

On an unknown date in late August 2008, approximately two weeks after the prior incident, at approximately 11:00 PM, § 87(2)(b) was walking outside of his building located at 2971 8th Avenue in Manhattan. § 87(2)(b) began to walk through a parking lot and observed approximately seven to eight unidentified officers speaking to friends of his, however, § 87(2)(b) could not identify any of these civilians. § 87(2)(b) was able to describe two officers who were present. PO1 is described as a Hispanic male, 5'6", stocky with black hair and PO2, described as a black male, 6'2", muscular with a slight beard. § 87(2)(b) could not describe any of the other officers present. § 87(2)(b) went over to PO1 while PO1 was speaking to another individual. PO1 told § 87(2)(b) to not stand around and watch police action and § 87(2)(b) stated that he could do whatever he wanted. PO1 asked § 87(2)(b) for his name and § 87(2)(b) refused to provide it and asked PO1 why his friends were questioned. § 87(2)(b) never actually heard the officers questioning his friends. PO1 asked § 87(2)(b) to back away which § 87(2)(b) believed that he did. PO1 asked § 87(2)(b) if he had identification and § 87(2)(b) stated that he did not but if he did he would not give it to PO1 anyway. PO1 told § 87(2)(b) to turn around and put his hands against the police car which § 87(2)(b) verbally refused to do. PO1 began to walk towards § 87(2)(b) and § 87(2)(b) put his hands out at PO1 but did not make contact. § 87(2)(b) stated that his hands were two feet away from PO1 and he was physically four feet away. At this point § 87(2)(b) noticed PO3 and PO4 walk up and they are both described as Asian males, thin, 5'8". § 87(2)(b) stated that PO3 and PO4 "did what they do" and "did judo." § 87(2)(b) had great difficulty describing what happened next but stated that he was grabbed by his hand and it was placed behind his back. An officer that § 87(2)(b) could not identify or describe then grabbed his other arm and spun § 87(2)(b) around and then he was "flipped in the air." At some point § 87(2)(b) was put on the ground but at no point was he punched or kicked. While § 87(2)(b) was on the ground PO1 put a knee on his back and PO3 and PO4 were restraining § 87(2)(b) on the ground in an unknown manner. § 87(2)(b) did not indicate whether he was resisting the officers. § 87(2)(b) was lifted off of the ground by an unknown officer and placed in a police vehicle. § 87(2)(b) was left in the vehicle by himself with the backseat window closed. § 87(2)(b) wanted the window open so he began to kick it. Either PO3 or PO4 came over and told § 87(2)(b) and he would mace him and later an unknown officer threatened to "taze him." § 87(2)(b) requested medical attention at a later point from officers, and an ambulance escorted him to an unknown hospital. § 87(2)(b) was not arrested or given a summons. § 87(2)(b) did not indicate if he was treated by the ambulance, what his injuries were or what hospital he was taken to. During his IAB tape § 87(2)(b) stated that he had the shield numbers for PO3 and PO4 but could not provide them during his interview.

On January 14, 2008, at approximately 3:30 PM, § 87(2)(b) went to a restaurant located next to 2923 8th Avenue in Manhattan. § 87(2)(b) was with two friends, § 87(2)(b) and § 87(2)(b). § 87(2)(b) was wearing a grey jacket with dark pants and a black Yankees hat. § 87(2)(b) exited the restaurant after five minutes and noticed an unmarked dark blue police van at a bus stop seven to ten feet away from the restaurant. The officers stared at § 87(2)(b) for thirty to forty seconds. There were two officers in the van, PO1, a Hispanic male, 5'7", with a stocky build and short black hair. PO2 is a white male, 6'0" with a chunky build and blond hair. PO1 and PO2 have been identified via investigation as PO Heriberto Vasquez and PO William Melrose respectively. § 87(2)(b) then, unprompted, took out his identification walked over to within three feet of the van and showed his identification to PO Vasquez, to which PO Vasquez responded, "get the fuck away from the van." During § 87(2)(b)'s statement to IAB he stated that the officer said "Get away from the van." § 87(2)(b) then said "excuse me" and backed away from the van.

The two officers exited the van, and PO Vasquez attempted to grab § 87(2)(b)'s right hand or arm. PO Vasquez did not make contact with § 87(2)(b) at this point because § 87(2)(b) moved his hand away. § 87(2)(b) could not recall if the officers said anything to him at this point and stated that the officers then "roughed him up." § 87(2)(b) had great difficulty remembering specifically what each officer did to him physically. He eventually recalled that as he moved away from PO Vasquez and PO Melrose grabbed

§ 87(2)(b)'s right arm. At some point § 87(2)(b)'s coat was lifted over his head and § 87(2)(b) was physically trying to get away from the officers, yelling "Why are you doing this?"

§ 87(2)(b) continued not to let the officers handcuff him and at some point one of the officers hit § 87(2)(b) in the chest but could not recall the specifics of the hit. § 87(2)(b) was brought to the ground and PO Melrose had his knee in his back and called for backup. § 87(2)(b) could not recall how he was put on the ground and PO Vasquez went on § 87(2)(b)'s back. While § 87(2)(b) was on the ground PO Melrose called § 87(2)(b) a "black motherfucker." § 87(2)(b) recalled feeling blows but did not know where these were aimed or which officers did so. § 87(2)(b) was still not handcuffed at this point and was rolling around on the ground to prevent this from occurring. A crowd had gathered at this point and the civilians were yelling at the officers to stop hitting § 87(2)(b). An unknown officer handcuffed § 87(2)(b) and lifted him off of the ground. During § 87(2)(b)'s IAB statement he stated that officers kicked him in the chest and legs. § 87(2)(b) noticed that there were seven to nine police vehicles present and an unknown amount of officers who had responded to the scene. Two unknown officers placed § 87(2)(b) into a marked police vehicle, but § 87(2)(b) could not recall which officers did so. § 87(2)(b) hit his head on the car doorframe but it did not cause too much pain. § 87(2)(b) was brought to PSA 6 and requested medical attention for his asthma. § 87(2)(b) did not request medical attention for any injuries sustained by the force used by officers. § 87(2)(b) was brought to § 87(2)(b) Hospital and was treated for his asthma. § 87(2)(b) told doctors at the hospital that he was jumped by officers and that was when his chest pain started. He also admitted to having ingested crack, marijuana and beer that day. § 87(2)(b) did not complain of any other injuries. § 87(2)(b) stated that he received bruising to his wrists, right ankle, chest and left knee but did not request medical attention for these injuries. § 87(2)(b) was arrested and charged with disorderly conduct, resisting arrest and obstructing governmental administration. § 87(2)(b) initially denied using profanity during this incident but later admitted to saying "Get the fuck away from me" at some unknown point during the incident.

On January 16, 2008, at approximately 9:00 AM, § 87(2)(b) went to the PSA 6 stationhouse to retrieve his cell phone which was vouchered when he was arrested. § 87(2)(b) claimed that he did not receive a voucher when he was arrested and officers told him that he did not need one. At the stationhouse, § 87(2)(b) asked the desk sergeant, identified via investigation as Sgt. William Gallagher, for his phone. Sgt. Gallagher asked for § 87(2)(b)'s voucher, and § 87(2)(b) responded that he had no voucher but showed Sgt. Gallagher his identification. Sgt. Gallagher at first stated that the stationhouse did not have his phone and then stated that without a voucher, § 87(2)(b) cannot receive his phone back. § 87(2)(b) became agitated and wanted to speak to someone in charge. Sgt. Gallagher told § 87(2)(b) to "get the fuck out of the precinct." § 87(2)(b) then asked for Sgt. Gallagher's name. § 87(2)(b) initially stated that Sgt. Gallagher refused to provide his name, but later § 87(2)(b) state that Sgt. Gallagher provided his name quickly and § 87(2)(b) could not understand him.

Results of Investigation

Attempts to Locate and Contact Witnesses

§ 87(2)(b) did not know the names of any of the witnesses to either incident in August and as such they could not be contacted. § 87(2)(b) stated that his friends § 87(2)(b) and § 87(2)(b) were present during the incident on January 14, 2008 and that his friend § 87(2)(b) was present for the incident as well. On February 27, 2008, the undersigned investigator spoke with § 87(2)(b) who stated that she could not schedule an interview at that time but would call back to schedule an interview. On March 14, 2008, § 87(2)(b)'s number was out of service. On April 2, 2008, § 87(2)(b)'s number was out of service. A first please call letter was mailed to § 87(2)(b) on April 2, 2008. On May 15, 2008, the undersigned investigator called § 87(2)(b) but her phone was out of service. As of June 3, 2009, § 87(2)(b) has not contacted the CCRB.

On March 14, 2008, the undersigned investigator called § 87(2)(b) but his phone was busy. On April 2, 2008, the undersigned investigator called § 87(2)(b) his phone was out of service. On April 2, 2008, a first please call letter was mailed to § 87(2)(b). On May 15, 2008, the undersigned investigator called

§ 87(2)(b) but his phone was out of service. As of June 3, 2009, § 87(2)(b) has not contacted the CCRB.

On March 14, 2008, the undersigned investigator called § 87(2)(b) and left a message for him. On April 2, 2008, and § 87(2)(b) scheduled an appointment for April 11, 2008. On April 2, 2008, a first please call letters was mailed to § 87(2)(b). On April 2, 2008, § 87(2)(b) did not attend his interview and a missed appointment letter was mailed on the same date. On May 15, 2008, a message was left for § 87(2)(b). As of June 3, 2009, § 87(2)(b) has contacted the CCRB.

On November 19, 2008, the undersigned investigator conducted fieldwork in the vicinity of the incident that occurred on January 14, 2008, in an attempt to find witnesses to this incident. A canvass was conducted however, no witnesses were able to be found and interviewed (Encl 18-18f).

Attempts to Obtain Physical Evidence

During § 87(2)(b)'s IAB complaint he stated that § 87(2)(b) has photos of § 87(2)(b)'s injuries and that § 87(2)(b) has friends who have video footage of the alleged abuse by the officers. § 87(2)(b) was unable to provide the information for these friends except for § 87(2)(b) who did not cooperate with this investigation. During his interview, § 87(2)(b) stated that § 87(2)(b) had cell phone footage of the incident on January 14, 2008; however, § 87(2)(b) was uncooperative in this investigation. § 87(2)(b)'s attorney § 87(2)(b) provided a ten second video from a cell phone of the incident on January 14, 2008. The footage shows § 87(2)(b) on the ground with one officer on top of him. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Identification of Officers Interviewed

PO Sanchez was the officer who issued the summons to § 87(2)(b) on the date of the first incident and PO Kutarnia was her partner on that date. PO Heriberto Vasquez was § 87(2)(b)'s arresting officer and confirmed his presence at the incident during his statement. PO Melrose was PO Vasquez's partner on the date of the incident. PO Frederico Vasquez was the officer who escorted § 87(2)(b) to § 87(2)(b) Hospital after he requested medical attention. Sgt. Gallagher was the desk sergeant on January 16, 2008 (Encl 14-14d).

Officer Statements

PO Heriberto Vasquez

PO Vasquez filled out § 87(2)(b)'s arrest report. He stated that § 87(2)(b) was originally arrested for obstruction of governmental administration, resisting arrest, harassment and two counts of disorderly conduct. The narrative states that § 87(2)(b) used obscene language and upon sighting police he became violent, attempting to fight with PO Vasquez and PO Melrose. § 87(2)(b) pushed PO Vasquez and flared his arms about in a violent manner. PO Vasquez filled out § 87(2)(b)'s voucher ticket and vouchered a cell phone and cell phone battery (Encl 9-9g).

PO Vasquez is a § 87(2)(b) old Hispanic male who is 5'10", 175 pounds with black hair and § 87(2)(b) eyes. PO Vasquez was interviewed at the CCRB on July 14, 2008 (Encl 9-9g). On January 14, 2008, PO Vasquez worked from 10:30 AM until 7:05 PM and was assigned to a conditions unit. He was partnered with PO Melrose and was in uniform and assigned to an unmarked van #9565. PO Vasquez's memo book indicates that at 12:40 PM PO Vasquez stopped one person in front of 2931 8th Avenue. At 12:45 PM § 87(2)(b) was arrested for OGA, resisting arrest and disorderly conducted. At 1:00 PM § 87(2)(b) was taken to § 87(2)(b) Hospital for asthma.

On January 14, 2008, at approximately 12:30 PM, PO Melrose was driving and PO Vasquez was in the passenger seat. The officers were driving down 8th Avenue and observed at least five people clustered together and who were acting in an aggressive manner. The officers made a U-Turn and were now on the same side of the street as the men. The officers were sitting by the curb for around two minutes observing

the situation when § 87(2)(b) approached the driver side window. PO Vasquez could not understand what § 87(2)(b) was saying but recalled him using profanity, screaming and yelling. PO Vasquez instructed § 87(2)(b) to step away from their vehicle which he did, only to return ten seconds later. § 87(2)(b) approached PO Vasquez within four feet. When he approached the second time, § 87(2)(b) had his hand in his pocket and appeared to be holding something. § 87(2)(b) was still yelling and cursing so both officers exited the vehicle. § 87(2)(b) began to flail his arms when the officers approached. The officers told § 87(2)(b) to leave the block and to calm down. § 87(2)(b) did not calm down and slapped PO Vasquez's hand down. PO Vasquez did not initially intend to arrest § 87(2)(b) this decision was made after the slap occurred. The two officers attempted to handcuff § 87(2)(b) but he would not comply as he was flailing his arms as well as placing his arms tight to his body to prevent handcuffing. After a few minutes the officers brought § 87(2)(b) to the ground and handcuffed him while on the ground. PO Vasquez placed the handcuffs on § 87(2)(b) in the end. Once handcuffed PO Vasquez and PO Melrose placed § 87(2)(b) into a different marked vehicle for transport back to the precinct. At no point did any additional units arrive to the scene. PO Vasquez did not hit § 87(2)(b) in the chest, knee § 87(2)(b) in the back nor did he ever punch § 87(2)(b) nor did he observe any other officer use excessive physical force against § 87(2)(b) smash his head into the doorframe of the police vehicle, use offensive language, profanity or refuse medical attention. § 87(2)(b) complained of asthma but no other injuries, nor did PO Vasquez observe other injuries on § 87(2)(b). Supervisors may have arrived to the scene, but PO Vasquez could not recall who that was.

PO William Melrose

PO Melrose is a § 87(2)(b) old white male who is 5'11", 185 pounds with § 87(2)(b) hair and blue eyes. PO Melrose was interviewed at the CCRB on July 28, 2008 (Encl 11-11c). On January 14, 2008, PO Melrose worked from 10:30 AM until 7:05 PM. He was assigned to conditions and worked with PO H. Vasquez. He was in uniform and assigned to an unmarked black van. PO Melrose's memo book indicates that at 12:40 PM, one male was stopped on 8th Avenue. At 12:45 one male was arrested in regards to request for assistance.

On January 14, 2008, at approximately 12:30 PM, PO Melrose was driving and PO Vasquez was the passenger in the van. The officers were parked in their van on the corner of 8th Avenue and had sat there for five minutes before § 87(2)(b) approached them. PO Melrose did not notice that § 87(2)(b) was with any other people. When § 87(2)(b) approached the passenger window he started to yell and scream, asking the officers if they thought he was a drug dealer. Both officers told § 87(2)(b) to walk away from the police vehicle. Approximately two minutes later, § 87(2)(b) returned and put his arm inside the police van and threw his license on the dashboard. He then yelled "Who do you think I fucking am, Nicky Barnes". § 87(2)(b) then yelled at the officers to just "Write me a fucking summons". § 87(2)(b) then took a step back from the van and put his hand in his pocket. Both officers exited their vehicle and together told § 87(2)(b) to remove his hand from his pocket, which he refused to do. Ten seconds later, PO Vasquez approached § 87(2)(b) pushed PO Vasquez in the upper chest. PO Melrose attempted to grab § 87(2)(b)'s arm to handcuff him, when § 87(2)(b) attempted to flee. He only ran a few steps before; PO Melrose grabbed § 87(2)(b) from behind and wrapped his arms around him, and jumped on § 87(2)(b)'s back. PO Vasquez also restrained § 87(2)(b) and the three of them fell to the ground. Once on the ground, § 87(2)(b) flailed his arms and refused to be handcuffed by placing his arm underneath his body. A few times § 87(2)(b) would attempt to get off the ground, only to be brought back down by the officers. The officers were having difficulty handcuffing § 87(2)(b) so PO Vasquez requested back up. The officers were on top of § 87(2)(b) attempting to keep him on the ground until other officers arrived. Within one minute fifteen to twenty officers arrived, and a few of those officers assisted in handcuffing § 87(2)(b). PO Melrose could not recall which officers arrived but he believed they were from the 32nd Precinct. Ultimately PO Melrose handcuffed § 87(2)(b) on the ground. None of his supervisors arrived. PO Melrose lifted § 87(2)(b) off the ground, and he and PO Vasquez placed him in a marked vehicle, where he was brought back to the Precinct. At this point a large crowd had gathered and was yelling at the officers to leave § 87(2)(b) alone, in addition, PO Melrose was hit in the head with a bottle thrown by one of the spectators. None of the crowd were arrested, or issued summonses. PO Melrose stated that neither he nor any other officer used any profanity, offensive language. PO Melrose never hit § 87(2)(b) put his knee in § 87(2)(b)'s back or used excessive force in subduing § 87(2)(b) nor did he observe any other officer use excessive force toward § 87(2)(b). Neither PO Vasquez nor PO Melrose hit § 87(2)(b) head on the doorframe. Once at the precinct, § 87(2)(b)

complained of chest pains, so PO Melrose called for an ambulance. PO Melrose did not see any injuries on § 87(2)(b) nor did § 87(2)(b) complain of any other injuries. At no point did § 87(2)(b) attempt to fight the officers. The whole incident took five minutes.

PO Frederico Vasquez

PO Vasquez escorted § 87(2)(b) to § 87(2)(b) Hospital and signed off on a hospital report stating that § 87(2)(b) complained of pain in his chest muscles and of asthma (Encl 10-10d).

PO Vasquez is a § 87(2)(b) old Hispanic male who is 5'9", 180 pounds with § 87(2)(b) hair and hazel eyes. PO Vasquez was interviewed at the CCRB on July 14, 2008 (Encl 10-10d). On January 14, 2008, PO Vasquez worked from 10:30 AM until 7:05 PM and was assigned to a conditions team. He was partnered with PO S. Martinez and was in uniform and assigned to a marked RMP #9410. PO Vasquez's memo book indicates that at 12:35 PM there was a request for backup at West 155th Street and 8th Avenue. At 12:40 PM PO Vasquez reported to the command. At 1:40 PO Vasquez transported the prisoner to § 87(2)(b) Hospital.

On January 14, 2008, at approximately 12:35 PM, PO Vasquez and his partner responded to the call for backup. PO Vasquez could not recall who called for backup but he recalled that there was a problem with the prisoner being loud. By the time he arrived at the scene where PO Melrose and PO Vasquez had detained § 87(2)(b) and it appeared that the situation was under control. PO Vasquez saw that there were quite a few other police vehicles at the scene, but he could not recall any specific police personnel at the scene. PO Vasquez did not exit his vehicle and was at the scene for less than a minute. At no point did PO Vasquez observe any officer using physical force against § 87(2)(b). PO Vasquez returned to the station house and was told to transport the prisoner, § 87(2)(b) to § 87(2)(b) Hospital since he complained of asthma. PO Vasquez did not view any injuries on § 87(2)(b). PO Vasquez never heard any officer use profanity towards § 87(2)(b).

Sgt. William Gallagher

Sgt. Gallagher was the desk sergeant on the date of the incident and made an entry into the command log regarding this incident. He wrote that § 87(2)(b) came to the desk demanding the return of his property. § 87(2)(b) had an unopened beer bottling in his hand and was visibly intoxicated. § 87(2)(b) did not have the pink copy of the voucher and did not have property identification. § 87(2)(b) became disruptive when he was not given his property and was told to leave. § 87(2)(b) stated as he left that he was going to make this "bigger than it is." (Encl 14-14a)

Sgt. Gallagher is a § 87(2)(b) white male who is 5'9", 190 pounds with § 87(2)(b) hair and § 87(2)(b) eyes. Sgt. Gallagher was interviewed at the CCRB on September 9, 2008 (Encl 8-8a). On January 16, 2008, Sgt. Gallagher worked from 7:00 AM until 3:00 PM. His assignment was desk sergeant and he was in uniform without a partner. Sgt. Gallagher did not have any memo book entries regarding this incident.

On January 16, 2008, at approximately 9:48 AM, § 87(2)(b) entered the precinct and approached Sgt. Gallagher. § 87(2)(b) had an unopened can of beer in his hand and appeared intoxicated. Sgt. Gallagher stated that he was slurring his words and walked in a manner consistent with someone who is drunk. § 87(2)(b) told Sgt. Gallagher that he had been arrested and wanted his property back. Sgt. Gallagher told § 87(2)(b) that that would not be a problem he just needed the voucher ticket and § 87(2)(b)'s identification. § 87(2)(b) stated that he had neither. Sgt. Gallagher stated that he could not give him back his property without those two items. § 87(2)(b) became enraged and started to yell "I want my property back." Sgt. Gallagher kept explaining what he needed to give him his property back. This lasted ten minutes. Sgt. Gallagher then yelled at § 87(2)(b) to "get out of the stationhouse." Sgt. Gallagher yelled at him because he was disrupting the stationhouse. Prior to leaving § 87(2)(b) asked the sergeant for his badge number and it was provided verbally. As § 87(2)(b) was leaving he was making a phone call and told Sgt. Gallagher that he was going to make this bigger than it was. Sgt. Gallagher ran into § 87(2)(b) on patrol a couple of months later and § 87(2)(b) apologized for his actions. The entire interaction lasted fifteen minutes. At no point did Sgt. Gallagher use profanity towards § 87(2)(b).

PO Lucy Kutarnia

PO Kutarnia is a § 87(2)(b) old white female who is 5'11", 145 pounds with blond hair and green eyes. PO Kutarnia was interviewed at the CCRB on May 26, 2009 (Encl 12-12d). PO Kutarnia worked from 6:00 PM on July 22, 2007, until 2:35 AM on July 23, 2007. PO Kutarnia was partnered with PO Sanchez, assigned to a foot post inside of the Polo Grounds and in uniform. PO Kutarnia's memo book indicates that at 9:50 PM there was one male stopped inside of the lobby of 2979 8th Avenue. A summons was issued to this male. At 10:04 PM a male was stopped for disorderly conduct and was taken to § 87(2)(b) Hospital where he was issued a summons by PO Sanchez for disorderly conduct.

On July 22, 2007, at approximately 9:50 PM, PO Kutarnia was with PO Sanchez inside of 2979 8th Avenue in Manhattan. The officers stopped an individual for smoking inside of the building and PO Sanchez began to issue him a summons. After approximately ten minutes, § 87(2)(b) entered the building and walked over to the officers. § 87(2)(b) was yelling and cursing immediately telling the officers to stop harassing people. § 87(2)(b) entered from the outside and while he was not with anyone at the time, people began to gather as § 87(2)(b) was yelling. PO Kutarnia stated that § 87(2)(b) appeared intoxicated as he was belligerent and was slurring his speech. PO Sanchez continued to write out the summons. The officers asked § 87(2)(b) to move away at least five times but § 87(2)(b) did not comply. In addition, § 87(2)(b) was asked for his identification which he refused to provide. § 87(2)(b) had been yelling for five to ten minutes when a crowd began to gather and PO Sanchez called for backup. Within two minutes an unknown amount of officers arrived possibly including PO Derrick Lewis. § 87(2)(b) was handcuffed by the officers and taken to a police vehicle and driven to the command by PO Sanchez and PO Kutarnia. PO Kutarnia never observed § 87(2)(b) being punched or slammed into the wall while being handcuffed nor did she observe § 87(2)(b) resisting arrest. Once at the command, a sergeant told PO Kutarnia and PO Sanchez to take § 87(2)(b) to § 87(2)(b) Hospital to check him out since he was drunk. § 87(2)(b) was taken to the hospital and given a summons by PO Sanchez for disorderly conduct. The officers then left the scene and PO Kutarnia believed that § 87(2)(b) left the hospital after ten minutes. PO Kutarnia did not observe any injuries on § 87(2)(b).

PO Susan Sanchez

PO Sanchez filled out the summons given to § 87(2)(b) on July 22, 2007. The summons was issued for disorderly conduct.

PO Sanchez is a § 87(2)(b) old Hispanic female who is 5'1", 155 pounds with § 87(2)(b) hair and § 87(2)(b) eyes. PO Sanchez was interviewed at the CCRB on April 27, 2009 (Encl 13-13f). PO Sanchez worked from 3:00 PM on July 22, 2007, until 2:35 AM on July 23, 2007. PO Sanchez was working with PO Kutarnia and was assigned to the Impact team. PO Sanchez was in uniform and not assigned to a vehicle. PO Sanchez's memo book indicates that at 10:00 PM. On PO Sanchez stopped Alberto Alvarez for smoking a cigarette in the lobby of 2979 8th Avenue. At 10:04 PM one male was arrested and taken to PSA 6. At 10:30 PM the prisoner was identified as § 87(2)(b) and he was taken to § 87(2)(b) Hospital. § 87(2)(b) was screaming and cursing causing public alarm and given a summons for disorderly conduct.

On July 22, 2007, at approximately 10:00 PM, PO Sanchez was inside of 2979 8th Avenue with her partner. She observed a sixteen-year old male smoking a cigarette in the lobby of the building which is illegal. PO Sanchez went over and asked him for identification. PO Sanchez called the identification over the radio for a warrant check and she and her partner were with this male for five minutes before they observed § 87(2)(b) either enter from the entrance or come out of the elevator. § 87(2)(b) approached the officers and was immediately yelling and belligerent asking the officers why they had stopped this male and what they were doing. The officers told § 87(2)(b) a few times to leave the area as this stop had nothing to do with him. § 87(2)(b) refused to leave and PO Sanchez decided to arrest § 87(2)(b). A crowd began to gather as § 87(2)(b) continued to yell at the officers. PO Sanchez could not recall everything that § 87(2)(b) was saying. In addition, once § 87(2)(b) continued to yell, the boy that the officers had initially stopped became agitated as well. PO Sanchez could not recall if § 87(2)(b) used profanity or if he appeared intoxicated. PO Sanchez had never seen § 87(2)(b) previously. PO Sanchez then told § 87(2)(b) that he was going to be arrested and while § 87(2)(b) continued to be belligerent he did not physically resist being handcuffed. Prior to being handcuffed PO Sanchez called for back up since a crowd had gathered and at least six officers arrived including PO Derrick Rose. PO Sanchez told § 87(2)(b) to

get against the wall which he did, and then PO Ward handcuffed § 87(2)(b) without incident. At no point was § 87(2)(b) punched or slammed into a wall. The only force used against § 87(2)(b) was turning him around and placing him in handcuffs. § 87(2)(b) then complained of asthma so he was taken to § 87(2)(b) Hospital by PO Sanchez and two hours later released with a summons. The sixteen-year old was given a summons and released.

Officers Not Interviewed

PO Sanchez identified PO Derrick Rose and PO Ward as being present at the incident on July 22, 2007; however, a search of the NYPD database determined that there are no officers with those names assigned to PSA 6. Therefore, PO Rose and PO Ward were not interviewed. Given that § 87(2)(b) was unable to provide the incident date for the incident in August, and police documentation was unable to determine when that incident occurred, no officers were able to be interviewed for that incident. Regarding the incident on January 14, 2008, PO Frederico Vasquez's partner, PO Stephanie Martinez was not interviewed as it was determined that she was not present for any of the allegations.

Medical Records

On § 87(2)(b), § 87(2)(b) was escorted by officers to § 87(2)(b) Hospital where he was treated. § 87(2)(b) complained of chest pains and asthma, and alleged that he was beaten by the police and that there where he received the injuries to his chest. § 87(2)(b) also stated that he has had similar injuries in the past. § 87(2)(b) admitted to having smoked \$150 dollars worth of crack, two bags of marijuana and drank a "couple" of forty-ounce beers earlier that day. There are no medical records from § 87(2)(b) Hospital regarding any previous dates specifically in § 87(2)(b) or on § 87(2)(b) (Encl 7-7b).

Police Department Documents

Arrest Photograph

§ 87(2)(b)'s arrest photograph from January 14, 2008 does not indicate any overt injuries. There may be a light puffiness to his left eye, but there is no other bruising on his face (Encl 6).

Prisoner Holding Pen Roster

On January 14, 2008, § 87(2)(b) was placed inside of the cell at 1:05 PM and was immediately taken to § 87(2)(b) Hospital. § 87(2)(b) was later taken to Manhattan Central Booking at 8:15 PM (Encl 13).

Command Log

The command log for January 16, 2008, was filled out by Sgt. Gallagher. In it he stated that § 87(2)(b) came into the precinct intoxicated and demanding his cell phone. When he was told that he could not retrieve it without a voucher ticket he became disruptive and was told to leave the precinct. As § 87(2)(b) was leaving he said that he was "going to make this bigger than it is." (Encl 14-14a)

Roll Call

The roll call for PSA 6 on January 14, 2008, indicates that PO Melrose and PO Vasquez were partnered. The roll call for PSA 6 on January 16, 2008, indicates that Sgt. Gallagher was the desk sergeant (Encl 14b-14d).

Police Officer CCRB History

PO Vasquez, PO Melrose and Sgt. Gallagher do not have any previously substantiated allegations. PO Vasquez has 3-years tenure with the NYPD. PO Melrose has 5-years tenure with the NYPD. Sgt. Gallagher has 8-years tenure with the NYPD (Encl 2-2c).

Complainant CCRB History

§ 87(2)(b) was the complainant in a previous CCRB case #200100009. The allegations in that case were force, pointing of a gun and discourtesy. The case was closed given that § 87(2)(b) did not participate in the investigatory process (Encl 2-2c).

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

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§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Notice of Claim

A check of the city database indicated that § 87(2)(b) has not filed a notice of claim regarding this incident (Encl 15).

Conclusions and Recommendations

Identification of Subject Officers

It was determined that since § 87(2)(b) could not describe any of the officers present on July 22, 2007, and that the force used was consistent with police guidelines it was unnecessary to identify the officers. Therefore, Allegation A is being pleaded against “Officers.” § 87(2)(b) was unable to provide an incident date for the incident in August 2007. As such, no officers were able to be interviewed regarding those incidents. Therefore, Allegations B, C and D are being pleaded against “An officer” and “Officers.” Regarding the incident on January 14, 2008, § 87(2)(b) described the two officers who interacted with him initially as, PO1, a Hispanic male, 5’7”, with a stocky build and short black hair. PO2 is a white male, 6’0” with a chunky build and blond hair. Based on § 87(2)(b)’s arrest report and other documentation it was determined that PO1 is PO Heriberto Vasquez. Therefore, Allegation E is being pleaded against PO Vasquez. It was determined that PO William Melrose was PO Vasquez’s partner and he matches the description given by § 87(2)(b). As such, Allegation G is being pleaded against PO Melrose. § 87(2)(b) stated that officers used force against him both on the ground and as he was placed inside of the police vehicle, but he could not describe these officers or recognize them. Therefore, Allegations F is being pleaded against “Officers.” Sgt. William Gallagher was the desk officer working on January 16, 2008, and admitted to having had an interaction with § 87(2)(b). Therefore, Allegation H is being pleaded against Sgt. Gallagher.

Undisputed Facts

It is undisputed that on July 22, 2007, § 87(2)(b) approached police officers engaged in speaking with a suspect. It is undisputed that § 87(2)(b) did not comply with police directives to leave the area. It is undisputed that force was used to restrain § 87(2)(b). It is undisputed that § 87(2)(b) was taken to § 87(2)(b) Hospital. It is undisputed that § 87(2)(b) approached officers on January 14, 2008, without instructions to do so. It is undisputed that PO Vasquez and PO Melrose instructed § 87(2)(b) to back away from the police vehicle. It is undisputed that the officers exited their vehicle. It is undisputed that § 87(2)(b) did not immediately allow himself to be handcuffed and that a physical altercation ensued between the officers and § 87(2)(b). It is undisputed that § 87(2)(b) was on the ground as a result of the altercation and he was handcuffed while on the ground. It is undisputed that § 87(2)(b) refused to be handcuffed. It is undisputed that a crowd gathered watching this incident and yelling at the police. It is undisputed that § 87(2)(b) was placed into a marked police vehicle and eventually taken to § 87(2)(b) Hospital. It is undisputed that on January 16, 2008, § 87(2)(b) went to the 806th stationhouse to request

his property back. It is undisputed that § 87(2)(b) did not have a property voucher, and that Sgt. Gallagher refused to return § 87(2)(b)'s property without it. It is undisputed that § 87(2)(b) became agitated when his property was not returned, and that he was told to leave the stationhouse by Sgt. Gallagher. It is undisputed that § 87(2)(b) asked Sgt. Gallagher for his name and shield numbers and Sgt. Gallagher provided it.

§ 87(2)(b), § 87(2)(g)

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§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(2)(g)

[REDACTED]

Allegations Not Pleaded

§ 87(2)(b) stated that on July 22, 2007, he observed officers speaking with an unknown male in the lobby of his building. § 87(2)(g)

§ 87(2)(b) alleged that as he was being placed inside of the police vehicle after being handcuffed he hit his left temple on the doorframe of the police vehicle. § 87(2)(b) did not indicate that this was done on purpose and he stated that this did not cause him much pain. As this alleged force occurred as § 87(2)(b) was being placed inside of the vehicle and by accident, the allegation of force will not be pleaded. § 87(2)(b) stated during his interview that he asked Sgt. Gallagher for his name and it was not provided to him. § 87(2)(b) amended his remarks later in the interview and stated that Sgt. Gallagher provided his name but it was said too quickly for § 87(2)(b) to remember. Although § 87(2)(b) could not understand the name provided, it was provided to him. Therefore, an allegation of refusal to provide name and shield number is not pleaded against Sgt. Gallagher.

Allegation A: Force: On July 22, 2007, officers used physical force against § 87(2)(b)

§ 87(2)(b) alleged that he was slammed into a wall and punched by unknown officers on July 22, 2007. Both PO Sanchez and PO Kutarnia stated that at no point was excessive force used against § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

[REDACTED]

Allegation B: Force: On an unknown date in August 2007, officers used physical force against

§ 87(2)(b)

Allegation C: Abuse of Authority: On an unknown date in August 2007, an officer threatened

§ 87(2)(b)

with the use of mace.

Allegation D: Abuse of Authority: On an unknown date in August 2007, an officer threatened

§ 87(2)(b)

with a taser.

§ 87(2)(b) stated that during an incident on an unknown date in August, officers used physical force against him and an officer threatened to use a taser and mace against him. § 87(2)(b) was unable to provide any information regarding the specific date of this incident. § 87(2)(b), § 87(2)(g)

Allegation E: Discourtesy: On July 14, 2008, PO Heriberto Vasquez spoke obscenely to

§ 87(2)(b)

Allegation G: Offensive Language: On July 14, 2008, PO William Melrose made remarks to

§ 87(2)(b)

based on race.

§ 87(2)(b) alleged that PO Vasquez told him to “get the fuck away from the van.” Additionally he stated that during the physical interaction, PO Melrose called him a “black motherfucker.” Both PO Vasquez and PO Melrose deny using any profanity or offensive language towards § 87(2)(b) § 87(2)(b), § 87(2)(g)

Allegation F: Force: On January 14, 2008, officers used physical force against

§ 87(2)(b)

§ 87(2)(b) alleged that in the course of officers placing him in handcuffs they hit him, kneed him in the back and generally used excessive force towards him. PO Melrose and PO Vasquez state that § 87(2)(b) was being agitated and belligerent and was flailing his arms around in a manner intending to injure the officers. § 87(2)(b), § 87(2)(g)

As per Patrol Guide Procedure 203-11, an officer “is responsible for the proper use of force under appropriate circumstances” (Encl 1-1b). § 87(2)(b), § 87(2)(g)

Allegation H: Discourtesy: On January 16, 2008, Sgt. William Gallagher spoke obscenely to

§ 87(2)(b)

§ 87(2)(b) alleged that when he went to the PSA 6 stationhouse in order to retrieve his property, Sgt. Gallagher told him to “get the fuck out of the precinct.” Sgt. Gallagher denied using profanity towards § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: